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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,252	02/27/2004	Jean Prevost	1912-0291P	1311

2292 7590 06/14/2005

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER	
MILLER, DANIEL H	

ART UNIT	PAPER NUMBER
1775	

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/787,252	PREVOST, JEAN	
	Examiner	Art Unit	
	Daniel Miller	1775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-16 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-16 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _____ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. PCT/CA99/00704.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 2/27/04.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,551,689 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the patent and claim 1 of the application are obvious variations of one another. Most of the claim language of the claims are identical except that the current application has a limitation delineating between two levels of the synthetic turf and the lower portion being a webbed system of tufts filled with an infill and the upper portion being a plurality of splits the previous patent claims a upper and lower layer of infill spread between the tufted fibers, which necessarily created a two level of tufts distinct in properties from one another. Therefore, two distinct layers of fibers already inherently existed in the previous application and it is an obvious

modification to adapt the lower portion of the tufted fibers to accommodate a change in the composition of the infill material.

Claim 2 of the application is obvious in view of claim 3 and 4 of the above named patent because it is an optimized range and therefore unpatentable. Claim 3 of the application is the same as claim 10 of the previous patent except that they depend on different obvious variations of claim 1 as explained above. Claim 4 of the application is the same as claim 11 of the previous patent except that they depend on different obvious variations of claim 1 as explained above. Claim 5 of the application is the same as claim 12 of the previous patent except that they depend on different obvious variations of claim 1 as explained above. Claim 6-12 of the application is the same as claim 13-19 of the previous patent except that they depend on different obvious variations of claim 1 as explained above.

Claims 13-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-5 of U.S. Patent No. 6,746752 B2 in view of Prevost U.S. 6,551,689 B1. Claim 1.

Claim 13 has almost identical language to claim 1 of U.S. Patent No. 6,746752 B2. The patent teaches two layers of infill, but the patent is silent as to the two layers of fibers including a lower portion of slits connected together.

However, the variation in the language comprising two layers of fibers including a lower portion of slits connected together can be taken from Prevost U.S. 6,551,689 B1, Claim 1.

Claim 14-16 of the application is the same as claim 3-5 of the previous patent except that they depend on different obvious variations of the independent claim as explained above.

It would have been obvious to combine the features of both synthetic turf systems to get the claim of the current application since two distinct layers of fibers and infill were already contemplated by the previous application and where inherently created by the presence of the two distinct layers of infill.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hass, Jr. (U.S. 4.337,283) in view of Elbert (U.S. 3,617,413) and further in view of Tomarin (U.S. 4,396,653).

Haas teaches a playing surface comprising a pile fabric with synthetic ribbons extending upwards from the pile fabric and an infill of particulate material. The ribbons being longitudinally split into individual strands of a selected length. The size of the

resilient particles being between 4 and 70 U.S. screen mesh size. The particles being of two types one being made of rubber, or cork and the other sand (column 5 line 5-25). The pile element being a substantially uniform in length from ½ to 2 inches and the infill filling up to a depth of between ½ of the length of the pile elements to just about even with the pile elements, and preferably 75% to 95% filling the length of the void between the pile elements (see claim 1 and column 5 line 26-35). The pile ribbons are made from 3/8ths gauge polypropylene 5 mills thick that are cut into a plurality of individual filaments (column 4 line 5-10). The examiner is interpreting this teaching to fit a wide range of ribbon widths from 4 mm to as small as below 200 microns or that such a variation would be obvious in view of the disclosure. Haas is silent as to the web like splits in the lower portion of the fiber and on the alignment of the fibers in relationship to each other.

Elbert discloses a wheel type splitter that randomly splits the ribbon of a synthetic turf to create the appearance of natural grass (see figure 3 and abstract and column 2 line 55-56 and column 3 line 1-8). It is the interpretation of the examiner that the random splitting created by the bladed wheel would necessarily create a webbing effect at the lower portion of the tuft as well as the split upper portion of smaller fibers. Elbert does not teach the spacing of the fibers in relation to one another.

Tomarin teaches a synthetic turf having polypropylene tufts aligned one-eight of an inch in one direction and one fourth in the opposite direction to form a tightly packed dense network of fibers that tend to intertwine (column 3 line 25-35).

It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the elements of Hass with the disclosure Elbert because they are both polypropylene ribbons used in synthetic turf and to further combine the teachings of Tomarin because the spacing would form a tightly packed dense network of fibers that tend to intertwine.

Conclusion

Also cited but not relied upon is Bergevin (U.S. 5,850,708), which discloses a synthetic turf cross-linked lower fiber portions as in figure 5b. The examiner notes that this discloses that the system of splits in the lower portion of the fibers claimed by applicants were known in the art before the applicants filing of his application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Miller whose telephone number is (571) 272-1534. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on (571) 272-1535. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel Miller

STEPHEN STEIN
PRIMARY EXAMINER